

**Introduced by Senators Torlakson and Yee**

May 21, 2007

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Senate Constitutional Amendment No. 12—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 6 of Article XIII D thereof, relating to local government finance.

## LEGISLATIVE COUNSEL'S DIGEST

SCA 12, as introduced, Torlakson. Local government: property-related fees.

The California Constitution, with the exception of fees or charges for sewer, water, and refuse collection services, conditions the imposition or increase of a property-related fee or charge upon approval by either a majority vote of the owners of the properties subject to the fee or charge or, at the option of the agency imposing the fee or charge, by a  $\frac{2}{3}$  vote of the voters residing in the area affected by the fee or charge.

This measure would additionally exclude fees and charges for stormwater and surface water drainage from these approval requirements for the imposition or increase of a property-related fee or charge.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

- 1 *Resolved by the Senate, the Assembly concurring,* That the
- 2 Legislature of the State of California at its 2007–08 Regular
- 3 Session commencing on the fourth day of December 2006,
- 4 two-thirds of the membership of each house concurring, hereby
- 5 proposes to the people of the State of California, that the
- 6 Constitution of the State be amended as follows:
- 7 That Section 6 of Article XIII D thereof is amended to read:

1 SEC. 6. Property Related Fees and Charges. (a) Procedures  
2 for New or Increased Fees and Charges. An agency shall follow  
3 the procedures pursuant to this section in imposing or increasing  
4 any fee or charge as defined pursuant to this article, including, but  
5 not limited to, the following:

6 (1) The parcels upon which a fee or charge is proposed for  
7 imposition shall be identified. The amount of the fee or charge  
8 proposed to be imposed upon each parcel shall be calculated. The  
9 agency shall provide written notice by mail of the proposed fee or  
10 charge to the record owner of each identified parcel upon which  
11 the fee or charge is proposed for imposition, the amount of the fee  
12 or charge proposed to be imposed upon each, the basis upon which  
13 the amount of the proposed fee or charge was calculated, the reason  
14 for the fee or charge, together with the date, time, and location of  
15 a public hearing on the proposed fee or charge.

16 (2) The agency shall conduct a public hearing upon the proposed  
17 fee or charge not less than 45 days after mailing the notice of the  
18 proposed fee or charge to the record owners of each identified  
19 parcel upon which the fee or charge is proposed for imposition.  
20 At the public hearing, the agency shall consider all protests against  
21 the proposed fee or charge. If written protests against the proposed  
22 fee or charge are presented by a majority of owners of the identified  
23 parcels, the agency shall not impose the fee or charge.

24 (b) Requirements for Existing, New or Increased Fees and  
25 Charges. A fee or charge shall not be extended, imposed, or  
26 increased by any agency unless it meets all of the following  
27 requirements:

28 (1) Revenues derived from the fee or charge shall not exceed  
29 the funds required to provide the property related service.

30 (2) Revenues derived from the fee or charge shall not be used  
31 for any purpose other than that for which the fee or charge was  
32 imposed.

33 (3) The amount of a fee or charge imposed upon any parcel or  
34 person as an incident of property ownership shall not exceed the  
35 proportional cost of the service attributable to the parcel.

36 (4) No fee or charge may be imposed for a service unless that  
37 service is actually used by, or immediately available to, the owner  
38 of the property in question. Fees or charges based on potential or  
39 future use of a service are not permitted. Standby charges, whether  
40 characterized as charges or assessments, shall be classified as

1 assessments and shall not be imposed without compliance with  
2 Section 4.

3 (5) No fee or charge may be imposed for general governmental  
4 services including, but not limited to, police, fire, ambulance or  
5 library services, where the service is available to the public at large  
6 in substantially the same manner as it is to property owners.

7 Reliance by an agency on any parcel map, including, but not  
8 limited to, an assessor's parcel map, may be considered a  
9 significant factor in determining whether a fee or charge is imposed  
10 as an incident of property ownership for purposes of this article.  
11 In any legal action contesting the validity of a fee or charge, the  
12 burden shall be on the agency to demonstrate compliance with this  
13 article.

14 (c) Voter Approval for New or Increased Fees and Charges.  
15 Except for fees or charges for sewer, water, ~~and stormwater and~~  
16 ~~surface water drainage, or~~ refuse collection services, ~~no property~~  
17 ~~related a property-related~~ fee or charge shall *not* be imposed or  
18 increased unless and until that fee or charge is submitted and  
19 approved by a majority vote of the property owners of the property  
20 subject to the fee or charge or, at the option of the agency, by a  
21 two-thirds vote of the electorate residing in the affected area. The  
22 election shall be conducted not less than 45 days after the public  
23 hearing. An agency may adopt procedures similar to those for  
24 increases in assessments in the conduct of elections under this  
25 subdivision.

26 (d) Beginning July 1, 1997, all fees or charges shall comply  
27 with this section.